

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: DIISOCYANATES ) Master Docket: Misc. No. 18-1001  
ANTITRUST LITIGATION )  
This Document Relates to: ) MDL No. 2862  
ALL ACTIONS )  
)

**APPLICATION TO APPOINT CARLSON LYNCH SWEET KILPELA & CARPENTER,  
LLP AS LIAISON COUNSEL**

Carlson Lynch Sweet Kilpela & Carpenter, LLP (“Carlson Lynch”) hereby applies for appointment as Liaison Counsel. Specifically, Carlson Lynch, which has committed two of its partners, Gary F. Lynch and Edwin J. Kilpela, and one of its senior associates, Kevin W. Tucker, to work on this litigation, is best suited to serve as Liaison Counsel. Carlson Lynch offers the support of Pittsburgh’s largest plaintiffs’ class action firm, its own clients who filed Complaints in this action,<sup>1</sup> and the requisite experience in class actions and multidistrict litigation (“MDL”). The inclusion of Kevin Tucker will also reflect diversity of age, experience, skills, and background, consistent with the diversity that exists in our local Bar and the guidance provided by the Duke Law Center for Judicial Studies, whose *Standards and Best Practices for Large and Mass-Tort MDLs* (“The Duke Report”) recommends that “a mix of experienced and new players enhances creativity and innovation, leads to better decision making and problem solving, and promotes discussion of novel concepts raised by those who have historically not been in leadership.”<sup>2</sup>

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<sup>1</sup> Carlson Lynch, along with its co-counsel, represents Plaintiffs Era Polymers Proprietary Limited (Civil Action No. 2:18-cv-01431-DWA-LPL) and Isaac Industries, Inc. (Civil Action No. 2:18-cv-01456-DWA-LPL). In lieu of submitting for lead counsel, Carlson Lynch submits these leadership papers seeking appointment as liaison counsel.

<sup>2</sup> Duke Law Center for Judicial Studies, *Standards and Best Practices for Large and Mass-Tort MDLs*, at p. 58-60 (Dec. 19, 2014), available at: [https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/standards\\_and\\_best\\_practices\\_for\\_large\\_and\\_mass-tort\\_mdls.pdf](https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/standards_and_best_practices_for_large_and_mass-tort_mdls.pdf) (last accessed Nov. 12, 2018).

## **I. Appointing Liaison Counsel Will Benefit This Litigation.**

Most of the firms moving for appointment as lead counsel lack a local office and many have not retained local counsel. Where an out-of-town attorney is appointed lead counsel, courts often appoint a local firm to serve as liaison counsel and assign them the additional responsibility<sup>3</sup> of advising lead counsel as to local practices and procedures.<sup>4</sup> See e.g., *Plumbers & Pipefitters Local 562 Pension Fund v. MGIC Investment Corp.*, 256 F.R.D. 620, 626 (E.D. Wis. 2009).

## **II. Carlson Lynch is Highly Qualified to Serve as Liaison Counsel in This Action.**

Carlson Lynch has dedicated itself to representing plaintiffs in consumer, employment, antitrust, financial services, and civil rights litigation. Carlson Lynch's attorneys have been appointed lead, co-lead, and liaison counsel in MDLs and other complex cases. Mr. Lynch has been managing complex class actions for nearly 30 years. Mr. Kilpela has managed all aspects of class actions. Mr. Tucker has supported senior counsel at Carlson Lynch and other firms in MDLs pending across the country. Carlson Lynch's firm resume is attached hereto as **Exhibit A**.

### **A. Carlson Lynch has Substantial Class and MDL Experience.**

Carlson Lynch's extensive experience in class actions, current and prior leadership and support roles in MDLs, and proven ability to work collaboratively with co-counsel in significant MDLs, makes it most qualified to serve as liaison counsel in this case.

In October 2018, the Eastern District of Pennsylvania appointed Mr. Lynch as Lead Co-Counsel on behalf of a putative nationwide class of student borrowers in *In Re FedLoan Student Loan Servicing Litigation*, MDL 2833 (E.D. Pa.). The Northern District of Georgia also appointed

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<sup>3</sup> Liaison counsel's responsibilities vary depending on the court's preferred organizational structure, but liaison counsel are typically charged with administrative and logistical tasks and other work designated to them by lead counsel, including substantive work in the litigation.

<sup>4</sup> The *Manual for Complex Litigation* also recognizes that liaison counsel is typically a firm with offices in the same area as the court where the action is pending. See MCL § 10.221.

him co-lead on behalf of the financial institution plaintiffs in one of the most high-profile MDLs pending currently: *In Re Equifax, Inc. Customer Data Security Breach Litig.*, MDL 2800 (N.D. Ga.). Throughout his career, Mr. Lynch has been court appointed to numerous MDL leadership structures, as lead counsel, co-lead counsel, or to serve on executive or steering committees, in class actions and multi-district litigations. Mr. Lynch has appeared before this Court on numerous occasions, and can trace his experience with Judge Ambrose to her initial appointment in 1993.

Mr. Kilpela has litigated complex class action matters around the country and has been appointed lead or class counsel in multiple actions, including *Quinn et al v. Walgreen Co.*, Case No. 7:12-cv-08187 (S.D.N.Y.); *In Re Supervalu, Inc., Customer Data Security Breach Litigation*, MDL 2586 (D. Minn.); and *Heinzl v. Cracker Barrel Old Country Stores, Inc.*, Case No. 2:14-cv-01455 (W.D. Pa.) (MDJ Mitchell). In addition, Mr. Kilpela has served on the plaintiffs' steering committee in class action and MDL matters. See *In Re Nutramax Cosamin Marketing and Sales Practices Litigation*, MDL 2498 (D. Md.).

Mr. Tucker has assisted the prosecution of several MDLs. Mr. Tucker coordinated plaintiffs' discovery efforts in *In Re Vizio Inc. Consumer Privacy Litigation*, MDL 2693 (C.D. Ca.), in which a preliminary settlement is now pending. He also serves as a committee member for the leadership teams in both *In Re FedLoan Student Loan Servicing Litigation*, MDL 2833 (E.D. Pa.) and *In Re Equifax, Inc. Customer Data Security Breach Litig.*, MDL 2800 (N.D. Ga.).

#### **B. Carlson Lynch has Knowledge of Local Procedures.**

Carlson Lynch has extensive experience litigating in the Western District of Pennsylvania.<sup>5</sup> The firm is familiar with the local rules and procedures of this Court. Mr. Lynch has served as a

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<sup>5</sup> Mr. Lynch and Mr. Kilpela have appeared in 33 and 39 cases, respectively, in the Western District of Pennsylvania in the past five years. Mr. Tucker has appeared in 28 cases in this District.

member on the Court's Local Rules Advisory Committee. Mr. Tucker volunteered as a law clerk while attending University of Pittsburgh School of Law, and upon graduation. To this end, Carlson Lynch has already worked cooperatively with various Plaintiffs' counsel in this case to ensure their familiarity with this Court's E-Discovery Program, Local Rules, and Practices and Procedures.

Carlson Lynch has experience litigating in the antitrust area. On November 7, 2018, Chief Judge Conti appointed Carlson Lynch attorney Kelly Iverson as Liaison Counsel in *In Re Railway Industry Employee No-Poach Antitrust Litigation*, MDL 2850 (W.D.Pa.). Carlson Lynch also is appointed to the Litigation Committee in *In Re Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406, (N.D. Ala.), where it represents subscriber plaintiffs in four states in a nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield's nationwide network of insurers who do not compete with each other based on geographic boundaries. In short, Carlson Lynch has the necessary knowledge and skills to be an asset if appointed as liaison counsel.

**C. Carlson Lynch has the Resources Necessary to Devote to this Litigation.**

Carlson Lynch is located only a few blocks away from the U.S. Courthouse and has room and resources available for counsel to utilize whenever needed in this action. Additionally, as demonstrated by its success in the actions described in the attached resume, Carlson Lynch has more than sufficient resources to contribute in its proportionate share with lead counsel in order to advance this litigation in a timely manner.

**D. Carlson Lynch has a Proven Track Record of Working Cooperatively with Co-counsel, Opposing Counsel, and the Court.**

Often, the greatest challenge in appointing a leadership structure in an MDL is appointing counsel that will work cooperatively and collaboratively with other counsel in the prosecution of the case. Attorneys Lynch, Kilpela, and Tucker have a proven record of managing and assisting MDLs successfully and a history of working with co-counsel collaboratively. Many of the lawyers

nationwide who litigate on behalf of plaintiffs in class actions have formed healthy and productive working relationships. Attorneys Lynch, Kilpela, and Tucker proudly submit they are part of that group of lawyers, and are capable of working with and/or supporting any of the lawyers in this case in order to secure a just, speedy, and inexpensive determination. Indeed, attorneys Lynch and Kilpela have collaborated with many of the counsel involved in this litigation previously.<sup>6</sup>

### **III. Carlson Lynch Supports the Petitions of Cohen Milstein and Hagens Berman.**

While willing and able to work with any counsel in this MDL, Carlson Lynch supports the petitions of Cohen Milstein and Hagens Berman to lead this case. Carlson Lynch has worked with both firms in prior litigation, collaborating effectively to divide work, avoid duplication, and manage costs. Carlson Lynch is confident they can do the same in this case, thereby helping to “expedite the case relative to a leadership committee working together for the first time.” *See* The Duke Report, at p. 55.

### **IV. Conclusion**

For all of the reasons stated above, the undersigned respectfully requests this Court appoint Carlson Lynch Sweet Kilpela & Carpenter, LLP, and specifically attorneys Gary F. Lynch, Edwin J. Kilpela, and Kevin W. Tucker, as Liaison Counsel in this MDL.

Dated: November 19, 2018

/s/ Gary F. Lynch

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<sup>6</sup> For example, Carlson Lynch has previously worked with Lief Cabraser Heimann & Bernstein, LLP; Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”); Hagens Berman Sobol Shapiro LLP (“Hagens Berman”); Edelson & Associates; and Kaplan Fox & Kilsheimer LLP.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2018, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

*/s/ Gary F. Lynch* \_\_\_\_\_

Gary F. Lynch